STATE OF MICHIGAN

COURT OF APPEALS

HILDA BRESSLER,

Plaintiff-Appellant,

v

ELIZABETH J. PERISO,

Defendant-Appellee.

UNPUBLISHED
February 18, 2003

No. 235000
Oakland Circuit Court
LC No. 00-026213-NO

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in a light most favorable to the party opposing the motion. MCR 2.116(G)(3)(b); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). "Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Based on the parties' deposition testimony, the trial court found that plaintiff was a social guest and, thus, a licensee. Although plaintiff later claimed in an affidavit that the purpose of her visit to defendant's home was to provide medical information, making her an invitee, a party may not create a factual issue by submitting an affidavit that contradicts damaging deposition testimony. *Downer v Detroit Receiving Hospital*, 191 Mich App 232, 234; 477 NW2d 146 (1991).

> A "licensee" is a person who is privileged to enter the land of another by virtue of the possessor's consent. A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit. Typically, social guests are licensees who

assume the ordinary risks associated with their visit. [*Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000) (citations omitted).]

Where a licensee slips on ice that is concealed by snow, a landowner is liable only when he or she knew or had reason to know of the danger and the risk was not open and obvious to the licensee. *Altairi v Alhaj*, 235 Mich App 626, 639; 599 NW2d 537 (1999). Because plaintiff failed to present evidence showing that defendant knew or had reason to know of the dangerous condition, the trial court properly granted the motion for summary disposition. *Maiden*, *supra*.

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray